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Tenaga Nasional Bhd v Majlis Daerah Hulu Terengganu

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01–5–03 OF 2012(T)
ZULKEFLI CJ (MALAYA), RICHARD MALANJUM CJ (SABAH AND SARAWAK), AHMAD MAAROP, HASAN LAH AND ZALEHA ZAHARI FCJJ
4 NOVEMBER 2014

Local Government — Rates — Assessment — Notice of assessment issued — Validity of — Whether in compliance with ss 137 and 141 of the Local Government Act 1976 — Whether notice of assessment valid and duly issued under Local Government Act 1976

This was an appeal by the appellant against the decision of the Court of Appeal in reversing the decision of the High Court. The High Court judge had granted an order in terms of the appellant's application for judicial review, inter alia, for a declaration that the respondent's notice of assessment dated 6 February 2005 issued in respect of the appellant's property where a hydroelectric station has been erected is null and void for non-compliance of s 141(3) of the Local Government Act 1976 ('the Act'). The respondent assessed and issued notice of assessment dated 6 February 2005 in respect of the appellant's hydroelectric station which the appellant objected as being excessive. The appellant thus sought a declaration under O 53 of the Rules of the High Court 1980 that the notice of assessment was null and void. The appellant's complaint was that when it received the 2005 notice of assessment, there was no prior notice issued in compliance with s 141 of the Act which rendered the notice of assessment null and void and also amounted to breach of the rules of natural justice. The respondent's position was that the 2005 notice of assessment was based on the 1999 valuation list which was extended by the state authority under s 137(3) of the Act. The issues that arose for the court's determination were whether there was a new valuation list prepared by the respondent as the local authority for the purpose of the issuance of the notice of assessment for the year 2005 assessment rates. It had also to be determined whether the respondent had in fact adopted the 1999 valuation list for the year 2005 assessment rates and have succeeded in furnishing evidence of any extension order as determined by the state authority of the said 1999 valuation list.

Held, allowing the appeal with costs here and below:

(1) The respondent failed to produce credible supporting evidence to support its contention that the 1999 valuation list had been adopted by way of an extension order by the State Authority. The Court of Appeal

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erred in holding that the respondent's letter dated 15 June 2005 to the appellant could be accepted as evidence that the 1999 valuation list had been extended by the State Authority (see para 14).

(2) The respondent's letter dated 15 June 2005 was only a reply by the Yang Di Pertua, Majlis Daerah Hulu Terengganu to the appellant in response to the objection made by the appellant to the respondent with regard to the annual value of the subject property and the notice of assessment issued. The respondent had failed to furnish any credible evidence such as the extract copy of the decision of the Majlis Mesyuarat Kerajaan Negeri Terenganu (the state authority) and its *Gazette* notification to support its contention that the 1999 valuation list had been extended by the State Authority (see para 14).

(3) If the respondent had prepared a new valuation list or had adopted and relied on the 1999 valuation list under s 137 by virtue of s 141 of the Act, the respondent was duty bound to notify the appellant of its reliance on such a valuation list that had been prepared or adopted (see para 15).

(4) The respondent was wrong in relying on s 137(2) of the Act to justify its action in not giving a notice under s 141 of the Act and in taking the position that the 1999 valuation list was still in force and for that reason it was not necessary to give the said notice. Section 137(2) of the Act should not be read in isolation, but must be read together with ss 137(3) and 141 of the Act. It is a principle of interpretation of statute that the words used in a section must be given their plain grammatical meaning. Where the court is dealing with two sub-sections of a section it would be necessary that the two sub-sections must be construed as a whole. The two sub-sections must be read as parts of an integral whole and as being inter dependent (see para 16).

(5) The respondent was entitled to rely on the 1999 valuation list for the year of assessment 2005 or any year of assessment thereafter. However, such reliance would constitute a 'new' valuation list and the respondent must comply with the procedure prescribed under ss 141, 142 and 145 of the Act by giving the necessary notice of a new valuation list and the appellant given a right to be heard. In the circumstances of this case, the respondent was in breach of s 141(3) of the Act by unilaterally relying on the 1999 valuation list, which amounted to a new valuation list in imposing the assessment rates for the year of assessment 2005 and in failing to give the requisite notice to the appellant (see para 19).

[Bahasa Malaysia summary

Ini adalah rayuan oleh perayu terhadap keputusan Mahkamah Rayuan untuk mengakas keputusan Mahkamah Tinggi. Hakim Mahkamah Tinggi telah memberikan perintah mengikut terma permohonan untuk semakan kehakiman perayu, antara lain, untuk deklarasi bahawa notis taksiran

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responden bertarikh 6 Februari 2005 yang dikeluarkan berkaitan hartanah perayu di mana stesen hidroelektrik telah dibina adalah terbatal dan tidak sah kerana ketidakpatuhan s 141(3) Akta Kerajaan Tempatan 1976 ('Akta tersebut'). Responden telah menaksir dan mengeluarkan notis taksiran bertarikh 6 Februari 2005 berkaitan stesen hidroelektrik perayu yang telah dibantah oleh perayu kerana dikatakan terlebih. Perayu dengan itu telah memohon deklarasi di bawah A 53 Kaedah-Kaedah Mahkamah Tinggi 1980 bahawa notis taksiran itu terbatal dan tidak sah. Aduan perayu adalah apabila ia menerima notis taksiran 2005 itu, tiada notis sebelumnya telah dikeluarkan untuk mematuhi s 141 Akta tersebut yang menjadikan notis taksiran itu terbatal dan tidak sah dan juga menjadi pelanggaran rukun keadilan asasi. Kedudukan responden adalah bahawa notis taksiran 2005 itu adalah berdasarkan senarai penilaian 1999 yang telah diberikan oleh pihak berkuasa negeri di bawah Akta tersebut. Isu-isu yang timbul untuk penentuan mahkamah adalah sama ada terdapat senarai penilaian baru yang disediakan oleh responden sebagai pihak berkuasa tempatan bagi tujuan keluaran notis taksiran bagi kadar taksiran tahun 2005. Ia juga perlu ditentukan sama ada responden telahpun menggunakan senarai penilaian 1999 bagi kadar taksiran tahun 2005 dan telah berjaya memperoleh keterangan berhubung apa-apa perintah lanjutan sebagaimana ditentukan oleh pihak berkuasa negeri tentang senarai penilaian 1999 itu.

Diputuskan, membenarkan rayuan dengan kos di mahkamah ini dan bawahan:

(1) Responden telah gagal untuk mengemukakan keterangan sokongan yang boleh dipercayai bagi menguatkan hujahnya bahawa senarai penilaian 1999 telahpun digunakan melalui perintah lanjutan oleh pihak berkuasa negeri. Mahkamah Rayuan terkhilaf kerana memutuskan bahawa surat responden bertarikh 15 Jun 2005 kepada perayu boleh diterima sebagai keterangan bahawa senarai penilaian 1999 telah dilanjutkan oleh pihak berkuasa negeri (lihat perenggan 14).

(2) Surat responden bertarikh 15 Jun 2005 hanya jawapan oleh Yang Di Pertua, Majlis Daerah Hulu Terengganu kepada perayu sebagai maklum balasan kepada bantahan yang dibuat oleh perayu kepada responden berhubung nilai tahunan hartanah yang dipersoalkan dan notis taksiran yang dikeluarkan. Respoden telah gagal untuk mengemukakan apa-apa keterangan yang boleh dipercayai seperti salinan petikan keputusan Majlis Mesyuarat Kerajaan Negeri Terenganu (pihak berkuasa negeri) dan pemberitahuan warta untuk menyokong hujahnya bahawa senarai penilaian 1999 telahpun dilanjutkan oleh pihak berkuasa negeri (lihat perenggan 14).

(3) Jika responden telah menyediakan senarai penilaian baru atau menggunakan dan bergantung kepada senarai penilaian 1999 di bawah

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s 137 menurut s 141 Akta tersebut, responden terikat dengan kewajipan untuk memberitahu perayu berhubung kebergantungannya kepada senarai penilaian sebegitu yang telah disediakan atau digunakan (lihat perenggan 15).

(4) Responden tersilap kerana bergantung kepada s 137(2) Akta tersebut untuk mewajarkan tindakannya untuk tidak memberi notis di bawah s 141 Akta tersebut dan mengambil pendekatan bahawa senarai penilaian 1999 itu masih berkuat kuasa dan untuk sebab itu ia tidak perlu utuk memberikan notis tesebut. Seksyen 137(2) Akta tersebut tidak patut dibaca berasingan, tetapi hendaklah dibaca bersama dengan ss 137(2) dan 141 Akta tersebut. Ia adalah prinsip penafsiran statut bahawa perkataan-perkataan yang digunakan dalam suatu seksyen itu hendaklah diberikan maksud dari segi tatabahasanya. Di mana mahkamah berhadapan dengan dua subseksyen suatu seksyen maka adalah perlu agar kedua-dua subseksyen iu ditafsirkan secara menyeluruh. Kedua-dua subseksyen itu hendaklah dibaca sebagai bahagian-bahagian daripada suatu yang menyeluruh dan bergantung satu sama lain (lihat perenggan 16).

(5) Responden berhak bergantung kepada senarai penilaian 1999 untuk taksiran tahun 2005 atau mana-mana taksiran selepas itu. Walau bagaimanapun, kebergantungan sebegini akan membentuk senarai penilaian 'baru' dan responden hendaklah mematuhi setiap prosedur yang ditetapkan di bawah ss 141, 142 dan 145 Akta tersebut dengan memberikan notis yang perlu berhubung senarai penilaian baru dan perayu diberikan hak untuk didengar. Dalam keadaan kes ini, responden telah melanggar s 141(3) akta tersebut dengan secara unilateral bergantung kepada senarai penilaian 1999 itu, yang menjadi senarai penilaian baru dalam mengenakan kadar taksiran bagi taksiran tahun 2005 dan dengan itu gagal memberikan notis yang dikehendaki kepada perayu (lihat perenggan 19).]

Cases referred to

Madanlal Fakirchand Dudhediva v Shree Changdeo Sugar Mills Ltd & Ors AIR 1962 SC 15431 (refd)

Legislation referred to

Local Government Act 1976 ss 137(2), (3), 141, 141(1), (3), 142(1), 144(2), (3), 145

Appeal from: Civil Appeal No T-01–185 of 2008 (Court of Appeal, Putrajaya)

Cecil Abraham (Shahul Hameed Amirudin, Sunil Abrahim and Chuar Pei Yean with him) (Zul Rafique & Partners) for the appellant.

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Azwan bin Abdul Wahab (Mohd Amirudin bin Mohamad with him) (Mohd Mohtar & Co) for the respondent.

Zulkefli CJ (Malaya) (delivering judgment of the court):

[1] This is an appeal by the appellant against the decision of the Court of Appeal in reversing the decision of the High Court. The High Court judge had granted an order in terms of the appellant's application for judicial review, inter alia, for a declaration that the respondent's notice of assessment dated 6 February 2005 issued in respect of the appellant's property where a hydroelectric station has been erected is null and void for non-compliance of s 141(3) of the Local Government Act 1976 ('the Act').

LEAVE TO APPEAL

[2] The appellant obtained leave to appeal against the decision of the Court of Appeal on the following questions of law:

(a) whether as a matter of law, the respondent is entitled to impose new assessment rates unilaterally by way of a letter dated 7 February 2005 contrary to the provisions of s 141(3) of the Act, especially when the assessment rate had been mutually agreed pursuant to a consent judgment dated 9 April 2000;

(b) whether the respondent and the appellant having entered into the consent judgment in respect of the assessment of the appellant's property based on the valuation list of 1999 ('valuation list 1999'), could such a valuation list be relied upon as a basis for a new assessment pursuant to a letter dated 7 February 2005;

(c) whether s 141(1) of the Act provides as a matter of law that the respondent may rely on the valuation list 1999 as the basis for the 2005 assessment without first giving prior notice to the appellant;

(d) whether the assessment by a letter dated 7 February 2005 issued by the respondent based on the valuation list 1999 without the preparation of a new valuation list for 2005, is ultra vires the Act, in particular, s 137(3) of the said Act;

(e) whether the valuation list 1999 was valid in the absence of evidence of an extension by the state authority pursuant to s 137(3) of the Act; and

(f) whether the cumulative acts of the respondent deprived the appellant of their statutory right to be heard in respect of the assessment raised against the appellant in the light of the provisions of ss 141(3), 142(1) and 144(3) of the Act.

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A BACKGROUND FACTS

[3] The relevant background facts of the case are these. The appellant owns a piece of land held under Lot PT 5068 Mukim Jenagor in the District of Hulu Terengganu ('the property') upon which a hydroelectric station has been erected. The respondent is the local authority of the District of Hulu Terengganu. The dispute between the appellant and the respondent stemmed from the 1999 valuation notice issued by the respondent. Vide notice dated 22 May 1999 the respondent gave the appellant a notice of its intention to exercise its power under s 144 of the Act to amend the valuation list applicable for the property. The property was revalued by the respondent at RM63,600,000 and consequently imposed an assessment rate of RM5,088,000pa. The appellant exercised its right of objection under s 144(3) of the Act and objected to the assessment. The respondent revised the valuation of the said property to RM62,400,000 and the assessment rate to RM4,992,000. The appellant then vide Kuala Terengganu Originating Motion No 25–08 of 1999 ('the 1999 OM') appealed to the High Court in respect of the revaluation of the property and the assessment rates pursuant to the right of appeal conferred by s 145 of the Act.

[4] The 1999 OM was settled by a consent judgment dated 9 April 2000. According to this consent judgment the appellant was required to pay the respondent a reduced assessment rate, that is RM2,000,000pa for a period of five years ending on 30 Jun 2004. A year later vide Kuala Terengganu High Court Civil Suit No 22–41 of 2001 the respondent applied to set aside the consent judgment ('the 2001 Civil Suit'). At the time of filing of the application for judicial review (which is the subject matter of this appeal before us) this 2001 Civil Suit was still pending before the High Court.

[5] By a letter dated 6 February 2005 the respondent sought to impose upon the appellant rates in accordance with the 1999 valuation list for the period commencing July 2004.

[6] On 12 January 2006 the appellant, vide Kuala Terengganu High Court Judicial Review Application No 13–01 of 2006, which application was subsequently amended applied for leave to apply for the following orders:

(a) a declaration that the annual value and assessment rates sought to be adopted and imposed by the Majlis Daerah Hulu Terengganu ('MDHT') in their bill No J/PT 5068 and dated 6 February 2005 for the property is invalid, null and void and/or illegal;

(b) an order of certiorari to remove into this honourable court and quash (a) the decision of the MDHT to adopt and impose for the property the

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annual value and assessment rates set out in their bill No J/PT 5068 and dated 6 February 2005; and (b) the decision of the MDHT in raising the said bill altogether; and

(c) further or in the alternative, an order of mandamus directed to the MDHT requiring them to issue the requisite notice under ss 141 or 144(2) of the Act as may be the case or as may be appropriate, to Tenaga Nasional Bhd to enable Tenaga Nasional Berhad to raise their objections to any new valuation list that may be prepared or adopted for the property or to the amendments sought to be made to the annual value and assessment rates in the current valuation list for the property and which amendments are as set out in the MDHT's bill No J/PT 5068 and dated 6 February 2005, as may be the case or as may be appropriate, and that the MDHT hear and determine the said objections according to law, and that pending the issuance of such notice and also thereafter, no assessment rates shall become due and payable to the MDHT other than the assessment rates set out in any such notice in accordance with the provisions of the Act, unless ordered or directed otherwise by this honourable court.

FINDINGS OF THE HIGH COURT

[7] The High Court allowed the appellant's application for judicial review. The learned judge ruled that the annual value and assessment rate sought to be adopted and imposed by the respondent dated 6 February 2005 was invalid on the following grounds:

(a) The respondent had unilaterally adopted the 1999 valuation list without complying with the procedures prescribed and thus deprived the appellant of their statutory right to object and appeal.

(b) Section 137(2) must be read with s 137(3) of the Act. Section 137(3) provides that a new valuation list 'shall be prepared and completed once every five years or within such extended time period as the State Authority may determine'. It follows that a valuation list shall have a maximum lifespan of five years. Before the expiry of the five years period of a valuation list, it was incumbent upon the respondent to take steps to either prepare a new valuation list or alternatively to take steps to extend the valuation list then in force to be extended by the state authority. The respondent failed to provide any extension order by the state authority. The 1999 valuation list accordingly lapsed in 2004.

(c) The respondent was on the facts of this case relying on the new valuation list and they were under a duty to issue a notice under s 141 of the Act to the appellant. As there was no evidence of such a notice being given the appellant was accordingly not accorded the avenue to exercise their statutory right to object and appeal.

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(d) The 1999 valuation list was still in dispute in view of the 2001 Civil Suit which was then still pending. Should the respondent succeed to set aside the consent judgment, the effect would be that the appeal filed by the appellant under the 1999 OM would be reactivated and then to be determined by the court.

FINDINGS OF THE COURT OF APPEAL

[8] The Court of Appeal in reversing the decision of the High Court in its judgment made the following findings:

> Before us the respondent conceded that the 2005 notice of assessment was based on the 1999 valuation list. The appellant's letter dated 15 June 2005 informing the respondent that the 1999 valuation list was extended pursuant to section 137(3) of the Act and the appellant's letter dated 20 November 2005 informing the respondent that the 2005 notice of assessment was based on the 1999 valuation list were produced as exhibits to the respondent's affidavit-in-support of its application. There was therefore no necessity to produce the extension order by the State Authority. In fact this was not the issue before us.
>
> Thus, the following facts are clear. The 2005 notice of assessment was based on the 1999 valuation list. It was extended by the State Authority under section 137(3) of the Act. There was no new valuation list prepared under section 137(3) of the Act. By virtue of section 137(2) of the Act the 1999 valuation list shall remain in force until it is superceded by a new valuation list.
>
> In light of the abovesaid facts, we hold the view that there was no statutory obligation to give notice in terms of section 141 of the Act. The appellant had not acted in breach of section 137 or 141 of the Act when it issued the 2005 notice of assessment based on the 1999 valuation list. In our judgment the said notice of assessment was a valid notice and duly issued under the Local Government Act 1976.

CONTENTION OF THE PARTIES

[9] It was the contention of the appellant that the respondent had failed to send notice of their intention to amend the valuation of the said property subsequent to the entry of the consent judgment. The appellant was accordingly denied of their statutory right to object under s 142 of the Act and subsequently to appeal to the High Court for determination under s 145 of the Act. It was the appellants' case that the respondent was duty bound to prepare a new valuation list once every five years or within such extended time period as the state authority may determine. On the facts of this case there was no evidence to support the respondent's case of the state authority having extended the 1999 valuation list.

[10] For the respondent it was contended that there was no necessity for a new valuation list to be prepared and for a notice under s 144(2) of the Act to

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be issued to the appellant. The respondent was still relying on the *gazetted* 1999 valuation list which was in force upon the same being extended to 2008 by the state authority pursuant to ss 137(2) and (3) of the Act. It was also argued that the consent judgment did not amend or vary the valuation of the property as it was only in relation to the assessment rates and not the valuation of the property.

DECISION OF THIS COURT

[11] We are of the view the principal issue to be decided in this appeal is whether there was a new valuation list prepared by the respondent as the local authority for the purpose of the issuance of the notice of assessment dated 6 February 2005 for the year 2005 assessment rates. It has also to be determined whether the respondent had in fact adopted the 1999 valuation list for the year 2005 assessment rates and have succeeded in furnishing evidence of any extension order as determined by the state authority of the said 1999 valuation list.

[12] It is noted the requirements set out under s 137(3) of the Act is that a new valuation list shall be prepared and completed once every five years or within such extended time period as the state authority may determine. Section 137 of the Act contains provisions relating to the valuation list as follows:

> 137 (1) The local authority shall cause a valuation list of all holdings not exempted from the payment of rates to be prepared containing:
>
> (a) the name of the street or locality in which such holding is situated;
>
> (b) the designation of the holding either by name or number sufficient to identify it;
>
> (c) the names of the owner and occupier, if known; and
>
> (d) the annual value or improved value of the holding.
>
> (2) The valuation list together with the amendments made under section 144 shall remain in force until it is superseded by a new valuation list.
>
> (3) A new valuation list which shall contain the same particulars as in subsection (1) shall be prepared and completed once every five years or within such extended period as the State Authority may determine

[13] Giving the words in s 137 of the Act its plain and ordinary meaning it is clear that before the expiry of the five years period the local authority shall prepare either a new valuation list or take steps for the existing list to be extended by the state authority. Following the 1999 valuation list it would appear that a new valuation list should have been prepared by the respondent latest by the year 2004. For the respondent to rely on the 1999 valuation list

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there should have been evidence of an extension by the state authority for the extended use of the 1999 valuation list.

[14] We are of the view the respondent has failed to produce credible supporting evidence to support its contention that the 1999 valuation list has been adopted by way of an extension order by the state authority. We find that the Court of Appeal erred in holding that the respondent's letter dated 15 June 2005 to the appellant can be accepted as evidence that the 1999 valuation list had been extended by the state authority. We are of the view that the respondent's letter dated 15 June 2005 was only a reply by the Yang Di Pertua, Majllis Daerah Hulu Terengganu to the appellant in response to the objection made by the appellant to the respondent with regard to the annual value of the subject property and the notice of assessment issued. The respondent has failed to furnish any credible evidence such as the extract copy of the decision of the Majlis Mesyuarat Kerajaan Negeri Terenganu ('the state authority') and its *gazette* notification to support its contention that the 1999 valuation list had been extended by the state authority.

[15] We are also of the view that if the respondent had prepared a new valuation list or had adopted and relied on the 1999 valuation list under s 137 by virtue of s 141 of the Act, the respondent was duty bound to notify the appellant of its reliance on such a valuation list that had been prepared or adopted. Section 141 of the Act provides as follows:

> 141 (1) Where any valuation list has been prepared or adopted under the provisions of section 137 the local authority shall give notice of the same and of the place where the valuation list or a copy thereof may be inspected in the Gazette and by way of advertisement in two local newspapers at least one of which is in the national language.
>
> (2) Any person claiming to be either the owner or occupier of a holding included in the valuation list or the agent of any such person may inspect the valuation list and make extracts therefrom without charge.
>
> (3) The local authority shall give notice in the same manner of a day not being less than forty-two days from the date of notification in the Gazette when the local authority will proceed to revise the valuation list and in all cases in which any holding is for the first time valued or the valuation thereon has increased the local authority shall also give notice to the owner or occupier thereof.

[16] We are of the view the respondent was wrong in relying on s 137(2) of the Act to justify its action in not giving a notice under s 141 of the Act and in taking the position that the 1999 valuation list was still in force and for that reason it was not necessary to give the said notice. We are of the view s 137(2) of the Act should not be read in isolation, but has to be read together with s 137(3) and s 141 of the Act. It is a principle of interpretation of statute that the words used in a section must be given their plain grammatical meaning.

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Where the court is dealing with two subsections of a section it is necessary that the two subsections must be construed as a whole. The two subsections must be read as parts of an integral whole and as being inter-dependent. (See the case of *Madanlal Fakirchand Dudhediva v Shree Changdeo Sugar Mills Ltd & Ors* (1962) AIR SC 15431) The provisions for s 142 and 145 of the Act have also to be considered in relation to the statutory right of the appellant to object and appeal with regard to the valuation list and the assessment rates.

[17] As to the consequence of the consent judgment dated 9 April 2000 entered into between the appellant and the respondent in the 1999 OM in respect of the assessment rates imposed by the respondent we are of the view that consent judgment was clearly not based on the 1999 valuation list. Any subsequent reliance on the 1999 valuation list in our considered opinion would tantamount to a new valuation list.

[18] The consent judgment recorded was clearly based on a reduced valuation of the property. It is therefore clear that the 1999 valuation list had been amended and could not have been the basis of assessment for the period from 1999 to 2004.

[19] We are of the view that the respondent was entitled to rely on the 1999 valuation list for the year of assessment 2005 or any year of assessment thereafter. However, we agree with the submission of learned counsel for the appellant that such a reliance would constitute a 'new' valuation list and the respondent must comply with the procedure prescribed under ss 141, 142 and 145 of the Act by giving the necessary notice of a new valuation list and the appellant given a right to be heard. In the circumstances of this case it is our finding that the respondent was in breach of s 141(3) of the Act by unilaterally relying on the 1999 valuation list, which amounted to a new valuation list in imposing the assessment rates for the year of assessment 2005 and in failing to give the requisite notice to the appellant.

CONCLUSION

[20] For the reasons abovestated we would answer the questions posed for our determination in this appeal as follows. Questions No 1, 2, 3 and 5 are answered in the negative. Questions No 4 and 6 are answered in the affirmative. We would also make an order that pending the hearing of the appellant's objection and appeal, the appellant would be directed to pay the assessment rate under the consent judgment until it is superceded by a new valuation list. The appeal is therefore allowed with costs. The order of the Court of Appeal is hereby set aside and consequently the order of the High Court is restored as varied.

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Appeal allowed with costs here and below.

Reported by Afiq Mohamad Noor